

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

20 cr 521 (CM)

JAMES CAHILL, et al.,

Defendants.

Conference

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New York, N.Y.  
October 29, 2020  
12:00 p.m.

Before:

HON. COLLEEN MCMAHON,

Chief Judge

APPEARANCES

AUDREY STRAUSS

Acting United States Attorney for the  
Southern District of New York

BY: JASON M. SWERGOLD

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JUN XIANG

LAURA DE OLIVEIRA

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BY: EDWARD VINCENT SAPONE

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BY: Alberto A. Ebanks

## APPEARANCES (Cont'd)

JAMES R. FROCCARO, JR.

Attorney for Defendant Norton

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Attorneys for Defendant Wangerman

BY: BRIAN EDWARD MAAS

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BY: STEVE ZISSOU

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BY: GLENN HOWARD MORAK

ALAN MICHAEL ABRAMSON

DOAR, RIECK, KALEY & MACK

Attorneys for Defendant Gipson

BY: JOHN FRANCIS KALEY

1 (Case called)

2 THE DEPUTY CLERK: For Defendant James Cahill,  
3 appearance.

4 MR. TALKIN: Good afternoon, your Honor. Sam Talkin  
5 for Mr. Cahill who is in my office social distancing from me  
6 over my left shoulder. We have discussed the details of a  
7 video appearance today, and he has consented to it proceeding  
8 as a video.

9 THE COURT: Thank you, Mr. Talkin.

10 THE DEPUTY CLERK: For Christopher Kraft.

11 MR. SAPONE: Good afternoon, your Honor. Edward  
12 Sapone for Mr. Kraft who dialed in and who also consents.

13 THE COURT: Thank you, Mr. Sapone.

14 MR. SAPONE: You're welcome.

15 THE DEPUTY CLERK: For Defendant Patrick Hill.

16 MR. EBANKS: Albert Ebanks, your Honor, on behalf of  
17 Patrick Hill. Good afternoon, your Honor. My client is  
18 listening in and consents to proceeding via video.

19 THE COURT: Thank you, Mr. Ebanks.

20 THE DEPUTY CLERK: Matthew Norton.

21 MR. FROCCARO: Good afternoon, your Honor. James  
22 Froccaro for Mr. Norton. He's seated behind me, your Honor,  
23 and he consents to proceeding by video for this conference.

24 THE COURT: Thank you, Mr. Froccaro.

25 THE DEPUTY CLERK: William Wangerman.

1 MR. MAAS: Brian Maas and Tyler Maulsby for  
2 Mr. Wangerman. We're substituting in today, your Honor, for  
3 Jill Shellow who previously appeared for him. Mr. Wangerman is  
4 on the line and consents to proceeding by video.

5 THE COURT: Thanks, Mr. Maas.

6 THE DEPUTY CLERK: Kevin McCarron.

7 MS. ABATE: Good morning, your Honor. This is Camille  
8 Abate representing Kevin McCarron. Mr. McCarron is also on the  
9 line, and he does consent to appearing this way.

10 THE COURT: Thank you, Ms. Abate.

11 THE DEPUTY CLERK: Jeremy Sheeran.

12 MR. LIPTON: Evan Lipton on behalf of Jeremy Sheeran  
13 who is appearing by telephone and consents to proceed remotely.

14 THE COURT: Thank you.

15 THE DEPUTY CLERK: Andrew McKeon.

16 MR. ZISSOU: Steve Zissou appears for Mr. McKeon.  
17 Your Honor, Mr. McKeon is on the phone. He's called in  
18 separately. He consents to proceeding in the manner in which  
19 the Court has established the conference for today.

20 THE COURT: Thank you, Mr. Zissou.

21 THE DEPUTY CLERK: Robert Egan.

22 MR. RIOPELLE: Roland Riopelle for Robert Egan.  
23 Mr. Egan is here with me in my office today, and we consent to  
24 proceed by video, your Honor.

25 THE COURT: Thank you, Mr. Riopelle.

1 THE DEPUTY CLERK: Scott Roche.

2 MR. MORAK: Good afternoon, your Honor. Glenn Morak  
3 and Alan Abramson for Scott Roche. Mr. Roche has dialed in,  
4 and he of course consents to proceeding by video.

5 THE COURT: Thank you.

6 THE DEPUTY CLERK: And Arthur Gipson.

7 MR. KALEY: Good afternoon, your Honor. John Kaley  
8 for Mr. Gipson. Mr. Gipson is present with me in my office,  
9 and he consents to this proceeding by video.

10 THE COURT: Thank you, Mr. Kaley.

11 THE DEPUTY CLERK: For the government.

12 MR. SWERGOLD: Good afternoon, your Honor. For the  
13 government, Assistant United states Attorneys Jason Swergold,  
14 Danielle Sassoon, and Jun Xiang, and special Assistant United  
15 States Attorney Laura De Oliveira.

16 THE COURT: Thank you, all.

17 I want to start by apologizing for last week. It was  
18 a mess. And I do very much apologize. If I hadn't cut it off,  
19 none of it would have been recorded for posterity.

20 As it turns out, the court reporter could not hear a  
21 single word of what was going on over the traffic noise, the  
22 back chatter, and the other problems. So I made the right  
23 call. I may have made it in a ^moment of peek, but I made the  
24 right call.

25 This is probably the second appearance on the

1 indictment I believe because there was an arraignment in mag  
2 court; is that correct?

3 MR. SWERGOLD: Yes.

4 THE COURT: We have a new Federal Rule of Criminal  
5 Procedure, thanks to Congress, which has decided that it should  
6 start drafting rules of procedures, since it has nothing better  
7 to do.

8 So I am today orally and subsequent to this proceeding  
9 in writing entering pursuant to Rule 5(f) of the Federal Rules  
10 of Criminal Procedure the following order:

11 The government must disclose to the defense all  
12 information "favorable to an accused" that is, "material either  
13 to guilt or to punishment" and that is known to the government.

14 This obligation applies regardless of whether the  
15 information would itself constitute admissible evidence. The  
16 government shall make good-faith efforts to disclose such  
17 information to the defense as soon as reasonably possible after  
18 its existence becomes known to the government, so as to enable  
19 the defense to make effective use of the information in the  
20 preparation of its case.

21 This obligation applies regardless of whether the  
22 information would itself constitute admissible evidence.

23 The's government shall disclose such information to  
24 the defense promptly after its existence becomes known to the  
25 government so that the defense may make effective use of the

1 information in the preparation of the case.

2 As part of these obligations, the government must  
3 disclose any information that can be used to impeach the trial  
4 testimony of a government witness within the meaning of *Giglio*  
5 *v. United States*, 405 U.S. 150 (1972), and its progeny.

6 Such information must be disclosed sufficiently in  
7 advance of the trial in order for the defendant to make  
8 effective use of it at trial or at such other time as the Court  
9 may order. The foregoing obligations are continuing and apply  
10 to materials that become known to the government in the future.

11 Additionally, as information is otherwise subject to  
12 disclosure, it must be disclosed regardless of whether the  
13 government credits it.

14 In the event the government believes that disclosure  
15 under this order would compromise witness safety, victim  
16 rights, national security, a sensitive law enforcement  
17 technique, or any other substantial government interest, it may  
18 apply to the Court for a modification of its obligation, which  
19 may include in-camera review or withholding or subjecting to a  
20 protective order or a part of the information otherwise subject  
21 to disclosure.

22 For purposes of this order, the word "government"  
23 includes all, current, or former federal, state, and local  
24 prosecutors, law enforcement officers, and other officers who  
25 have participated in the prosecution or investigation that led

1 to this prosecution of the offense or offenses with which the  
2 defendants are charged. The government has an affirmative  
3 obligation to seek from such sources all information subject to  
4 disclosure under this order.

5 If the government fails to comply with this order, the  
6 Court, in addition to ordering production of the information,  
7 may:

8 One, specify the terms and conditions of such  
9 production;

10 Two, grant a continuance;

11 Three, impose evidentiary sanctions;

12 Four, impose sanctions on any responsible lawyer for  
13 the government;

14 Five, dismiss charges before trial or vacate a  
15 conviction after trial or a guilty plea;

16 Or, Six, enter any other order that is just under the  
17 circumstances.

18 Mr. Swergold, do you acknowledge having heard  
19 everything I just said?

20 MR. SWERGOLD: Yes, your Honor. I do.

21 THE COURT: I would like every other member of your  
22 team to acknowledge that he has heard or she has heard what  
23 I've just said.

24 MR. XIANG: Yes, your Honor. This is Jun Xiang for  
25 the government, and I concur.



1 MS. SASSOON: This is Danielle Sassoon for the  
2 government, and I acknowledge.

3 MS. OLIVEIRA: Your Honor, this is Special AUSA Laura  
4 De Oliveira, and I also acknowledge.

5 THE COURT: Oaky. Well, this will be entered in  
6 writing at the conclusion of this proceeding. That's our new  
7 procedure, folks, to be done in this district at the first  
8 appearance on an indictment or an information. We'll be  
9 entering back orders in a lot of cases.

10 Okay. Who is going to talk for the government?

11 MR. SWERGOLD: This is Jason Swergold. I will, your  
12 Honor.

13 THE COURT: Mr. Swergold, just tell me what this is  
14 about.

15 MR. SWERGOLD: Your Honor, so I'll give you a quick  
16 procedural history of the case and then the background of the  
17 charges, and then I can discuss the discovery in this case.

18 An indictment was returned on October 1. Defendant  
19 James Cahill was arrested the evening before, on September 30.  
20 The rest of the defendants were arrested the morning of  
21 October 1, and everybody was presented and arraigned on that  
22 date.

23 The charges in this indictment arise from a multi-year  
24 investigation into union corruption, an investigation that  
25 involved wiretaps, recorded bribes, searches, surveillance, and

1 focused on official at two unions, Steamfitters Local 638 and  
2 Plumbers Local 200.

3 The defendants were current and former officials at  
4 these unions who agreed with each other to accept bribes and  
5 betray their union's trust by taking actions favorable to  
6 nonunion employers.

7 The majority of these defendants were business agents.  
8 Those are union officials who were assigned to manage certain  
9 geographical areas for their union, and they're responsible for  
10 the day-to-day management of their union's interactions with  
11 contractors in those areas. As part of their responsibilities,  
12 they're expected to work to ensure that contracts are awarded  
13 to employers who employ members of their union.

14 Now, the charge in this case include a RICO conspiracy  
15 against nine of the defendants, an honest services wire fraud  
16 conspiracy against all 11 of the defendants, and a Taft-Hartley  
17 conspiracy against all 11 of the defendants.

18 At the center of the RICO conspiracy, your Honor,  
19 charged in Count One is James Cahill, at the time the president  
20 of the New York State Building & Construction Trades Council.

21 So your Honor understands, the Trades Council  
22 represents over 200 unionized construction workers in New York  
23 state, including steamfitters from Local 638 and plumbers from  
24 Local 200.

25 That made him one of the most powerful labor officials

1 in the state. And he used that position, your Honor, to bring  
2 other members, other defendants, into this enterprise. He  
3 exercised considerable influence over the affairs of the  
4 enterprise, which we've defined as these current and former  
5 officials of Local 638.

6 And these members of the RICO enterprise, instead of  
7 looking out for the interests of their unions, they committed  
8 honest services fraud, Taft-Hartley violations, and state  
9 bribery offenses.

10 And the indictment sets forth just some examples of  
11 the recorded conversations these defendants had in which they  
12 explicitly discussed the actions that they would take in  
13 exchange for (inaudible).

14 In one meeting, Mr. Cahill instructed a nonunion  
15 employer not to sign with the union, despite the fact that  
16 Mr. Cahill's job was to represent the interests of hundreds of  
17 thousands of union workers.

18 Defendant Patrick Hill told a nonunion employer that  
19 Local 638, of which he was a business agent, wouldn't make  
20 trouble for that nonunion employer in Hill's geographic  
21 territory.

22 More than one of the defendants referred to receiving  
23 bribes as "the real world and a place where there is wiggle  
24 room, so long as everybody gets taken care of," meaning  
25 everybody's bribed.

1 So that's an overview of the charges, your Honor. If  
2 your Honor would like, I can now discuss what discovery would  
3 look like in this case or answer any specific questions about  
4 the nature of this case.

5 THE COURT: Let's talk about discovery.

6 MR. SWERGOLD: Thank you, your Honor.

7 So as your Honor is aware, the parties had negotiated  
8 a protective order which we submitted and your Honor has now  
9 signed. We've also been collecting hard drives from all of the  
10 defendants to load the discovery, and we have it from almost  
11 all of them.

12 There is a substantial amount of discovery in this  
13 case, both electronic materials, hard-copy materials that are  
14 being digitized and scanned. And we've been working to  
15 organize all of those files for purposes of discovery. And we  
16 are currently finalizing stamping and will begin burning today  
17 for the defendants who have already sent up the drives.

18 The major categories of discovery, your Honor, are  
19 wiretap recordings and associated data and reports and  
20 paperwork for those wiretaps. There were wiretaps on three of  
21 the defendants in this case. And then there are some other  
22 wiretaps for non-charged individuals that had captured some of  
23 the defendants. We'll be making a production of that as well.

24 There are many dozen consensual recordings, audio and  
25 video, with accompanying surveillance photographs, prerecorded

1 bribe money, law enforcement reports.

2 We also have draft transcripts of many of the  
3 meetings. And pursuant to a stipulation that we've entered  
4 into with the defendants, we will be producing draft  
5 transcripts for many of these meetings to assist the defendants  
6 in working through that discovery.

7 There is also a significant amount of phone records,  
8 call detail records, pen register data, bank and financial  
9 records, cell site GPS warrants, an automobile tracking  
10 warrant, email and iCloud search warrants, and searches from  
11 one dozen phones seized on the day of the takedown.

12 The initial production is going to consist of what  
13 I think is the most important discovery for purposes of the  
14 defendants getting a handle on the charges against them, which  
15 would be the video and audio recordings of the meetings that  
16 the defendants are captured on, as well as the photo  
17 surveillance and the draft transcripts.

18 For all of the phones that we've been able to unlock  
19 to date, we will also be producing the forensic images of those  
20 phones to the particular defendants.

21 In the next round of discovery, we're going to  
22 prioritize the warrant application, the wiretaps, phone  
23 records, bank records, and additional law enforcement reports.  
24 Our current estimate is that we will be able to complete the  
25 vast majority of all Rule 16 discovery within approximately 60

1 days.

2           There are just a few areas that I want to flag for  
3 your Honor and defense counsel regarding that 60-day period.  
4 The first is electronically stored information.

5           With respect to some of the cell phones, we've had to  
6 send them out because they were locked and we need a vendor to  
7 try to unlock them. We will obviously review and produce them  
8 expeditiously when we receive them back from the vendor. We  
9 have undertaken and continue to undertake responsiveness  
10 reviews on electronically stored information and will be making  
11 those productions on a rolling basis.

12           And then finally, we have been receiving and will  
13 likely continue to receive responses from entities that we have  
14 subpoenaed. And we will of course continue to produce the  
15 material that we receive in response to the subpoenas on a  
16 rolling basis. So that of course could end up being past the  
17 60-day time period as various entities comply with our  
18 subpoenas.

19           THE COURT: Okay. Who is going to speak for the  
20 defendants?

21           MR. TALKIN: Your Honor, this is Sam Talkin. I guess  
22 I can, since Mr. Cahill is listed first on the indictment.

23           I think that obviously we would ask for 90 days to  
24 come back so that we can get the discovery, analyze it, and  
25 then we can come back and probably give your Honor a better

1 picture about what motions we would file.

2 We would coordinate -- for example, Title III we would  
3 coordinate so you don't get 11 Title III suppression motions.

4 THE COURT: I would really appreciate that.

5 MR. TALKIN: We'll get that done for you, your Honor.  
6 And then other motions that have overlapping interests, we will  
7 work on that. So I think if you give us 90 days, we can put  
8 our heads together both with our clients and the lawyers and  
9 give your Honor an idea of where we're headed. That's  
10 assuming, obviously, we get the meaty discovery within that  
11 60-day period.

12 THE COURT: Does anybody have an objection to that  
13 from the defense perspective?

14 MR. EBANKS: This is Al Ebanks, your Honor. I  
15 represent Patrick Hill. I don't have an objection. I think  
16 that 90 days sounds like the right amount of time minimally, I  
17 would say, your Honor, just so that we can really get a handle  
18 on the discovery.

19 So assuming we receive it any time soon, I'm hoping  
20 that 90 days sounds right to the Court, your Honor. It sounds  
21 like we should be able to wrap our head around this by then.

22 MR. TALKIN: Your Honor, if 90 days -- if it becomes  
23 clear that it's not enough, we'll obviously file a letter with  
24 the Court.

25 THE COURT: Ninety days doesn't sound like a problem

1 to me. So when is 90 does from now? The 28th/29th of January.

2 Mr. O'Neill?

3 THE DEPUTY CLERK: We'll assume that we'll be in  
4 person on that date?

5 THE COURT: We'll assume that we'll discuss that as  
6 the date draws closer.

7 THE DEPUTY CLERK: So the 28th at 4:00.

8 MS. ABATE: Your Honor, this is Camille Abate for  
9 Kevin McCarron. I just want to apprise the Court that I have a  
10 suppression hearing in front of Judge Rakoff on January 27  
11 which may go more than one day. I don't know if you want to do  
12 it a little bit before or a little bit after, but I want to  
13 make sure I'm able to appear on the next date of this case.

14 THE COURT: I think Judge Rakoff will let you go at  
15 the end of the second day of the suppression hearing.

16 MR. SAPONE: Your Honor, this is Ed Sapone for  
17 Mr. Kraft. Nice to see your Honor.

18 THE COURT: What are you going to do to screw this up?

19 MR. SAPONE: Absolutely nothing. I certainly wouldn't  
20 screw anything up in this courtroom. But I'm going to be on  
21 trial the whole month of January, and I'll have someone cover,  
22 with the Court's permission. I'll make that application when  
23 we get closer.

24 THE COURT: That's fine.

25 MR. SAPONE: Thank you.



1 THE COURT: So let's put it on for 4:00 on the 28th  
2 and give Ms. Abate two full days. Judge Rakoff doesn't tend to  
3 go -- these days anyway, he doesn't tend to go beyond 4:00.

4 And time is excluded in the interests of justice. The  
5 defendants' interest in a speedy trial is outweighed by the  
6 need for them to get their hands on what sounds like quite  
7 voluminous discovery, start making their way through it, and to  
8 put together a plan of action which they are in no position to  
9 make now.

10 I should put on the record that under the Cares Act,  
11 that it is the opinion of this Court that in view of the rising  
12 number of cases in New York, that it is necessary and advisable  
13 for us to hold proceedings, wherever possible, remotely by  
14 video, as this proceeding has been, or by audio. Some people  
15 are on an audio.

16 And I hereby make all the findings necessary to be  
17 made under the Cares Act to authorize the holding of this  
18 proceeding in this remote manner. The defendants have all  
19 consented orally on the record, and written consents will be  
20 submitted if they have not already been submitted.

21 Okay?

22 MR. TALKIN: Yes, your Honor.

23 MS. ABATE: Thank you, your Honor.

24 THE COURT: Anything else from the government?

25 MR. SWERGOLD: No. Thank you, your Honor.

1 THE COURT: Anything else from the defendants?

2 MR. TALKIN: No. Thank you, your Honor.

3 MR. SAPONE: No. Thank you, your Honor.

4 THE COURT: Thank you very much for cooperating in  
5 this difficult task of getting this together. Let's get  
6 moving.

7 MR. TALKIN: Thank you, your Honor.

8 MR. SAPONE: Thank you.

9 MR. SWERGOLD: Thank you.

10 (Adjourned)

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